



**THE ATTORNEY GENERAL
OF TEXAS**

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ICE DANIEL
ORNEY GENERAL

AUSTIN 11, TEXAS

August 6, 1952

Hon. D. C. Greer
State Highway Engineer
State Highway Department
Austin, Texas

Opinion No. V-1493

Re: Effect of the act creating
the Board for Lease of High-
way Commission lands upon
the previous authority of
the Highway Commission re-
specting these lands.

Dear Sir:

You have requested an opinion upon the follow-
ing problem:

"Lands acquired by the Highway Commission by purchase, condemnation or otherwise to be used for rights of way for State Highways, and which are no longer needed for highway right of way purposes or by citizens as a road, because of the changing of the route or abandonment of such highway, have for many years been disposed of by requesting the Governor to execute quit claim deeds to such lands after the proposed transfers have been approved by the Attorney General. This procedure seems to be in line with the authority contained in Article 6673a of Vernon's Civil Statutes and, possibly in some instances, by Article 6674q-9.

"Since the 52nd Legislature enacted Senate Bill 354 creating Boards for the leasing of all State owned lands for oil, gas and mineral development, we are wondering if it repeals all or a part of Article 6673a and 6674q-9, or in any manner limits the authority of the Highway Commission to dispose of such changed or abandoned right of way as it has in the past."

Article 6673a, V.C.S., provides as follows:

"Wherever the State Highway Commission has acquired or shall hereafter acquire any land by purchase, condemnation, or otherwise to be used as a right of way for any State Highway and thereafter the route of such Highway was or shall be

changed or abandoned, and any such right of way be no longer needed for such Highway, or needed for use of citizens as a road, the State Highway Commission may recommend to the Governor that such land be sold and that he execute a deed conveying all the State's right, title, and interest in such land so acquired. Upon the recommendation of the Commission, the Governor may execute a proper deed conveying and/or exchanging such land for different land belonging to the same person or persons. It shall be the duty of the Commission to fix the fair and reasonable value of all such land and advise the Governor thereof. Provided that where such land is given to the State, the Governor may return the same by proper deed to the person or persons from whom the same is received. All money derived from the sale of such land shall be deposited with the funds from which it was originally taken. The Attorney General shall approve all transfers under this Act."

The portions of Article 5382d, V.C.S. (Acts 52nd Leg., R.S. 1951, ch. 325, p. 556) which are material to the creation of boards to lease State-owned lands are as follow

"Section 1. There is hereby created Boards for lease of lands owned by any Department, Board or Agency of the State of Texas . . .

"Section 2. All lands or any parcel of same now owned by, or that may hereafter be owned by, or held in trust for the use and benefit of, a Department, Agency or Board may be leased by the appropriate Board for Lease to any person or persons, firms, or corporations subject to and as provided for in this Act, for the purpose of prospecting or exploring for and mining, producing, storing, caring for, transporting, preserving, selling and disposing of the oil, gas or other minerals.

"Section 4. Whenever in the opinion of the appropriate Board for Lease there shall be such a demand for the purchase of oil, gas or mineral leases on any lot or tract of land subject to the control of the Board as will reasonably insure an advantageous sale, the Board for Lease shall place such oil, gas or mineral leases on the market in such tract or tracts as the Board for Lease may designate. . . .

Section 15 provides that "all laws and parts of laws in conflict herewith are hereby expressly repealed" with several exceptions not material to this opinion.

It is clear that Article 6673a is not repugnant to Article 5382d. Article 6673a authorizes the conveyance of an abandoned right-of-way, but it does not grant the power to lease such right-of-way for oil and gas purposes. Att'y Gen. Op. 0-2481 (1940). Article 5382d provides a procedure whereby lands owned by any state department may be leased for mineral development. No part of this article provides for the sale of lands owned by a department. There being no repugnance between the two statutes, they should be allowed to stand together. This rule of statutory construction was expressed by the Supreme Court in Winterman v. McDonald, 129 Tex. 275, 283, 102 S.W.2d 167, 171 (1937), as follows:

"Repeal of laws by implication is not favored. 39 Tex. Jur., Section 75, p. 140: 59 C.J., Section 510, p. 905. In the absence of an express repeal by statute, where there is no positive repugnance between the provisions of the old and new statutes, the old and new statutes will each be construed so as to give effect, if possible, to both statutes. 39 C.J., Section 75, p. 140."

If Article 5382d should be construed as repealing Article 6673a, the result would be that there would be no method of selling an abandoned right-of-way. It is extremely doubtful that the Legislature intended to leave the State without a method for selling land which is no longer of any use to the State or to the public.

You are therefore advised that Article 5382d, which you refer to as Senate Bill 354, does not require you to change your methods of selling abandoned rights-of-way as authorized by Article 6673a. It merely operates to subject the land to the possibility of being leased for oil and gas development by the Board for Lease.

SUMMARY

Article 5382d, V.C.S. (Acts 52nd Leg., R.S. 1951, ch. 325, p. 556), relating to the leasing

of State owned lands for oil, gas, and mineral development, does not repeal the power of the State Highway Department to sell abandoned rights-of-way according to the methods prescribed in Article 6673a, V.C.S.

Yours very truly,

APPROVED:

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TB:bt:jrb

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